The Solicitors' Journal

VOL. 91 — Saturday, December 20, 1947 — No. 49

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CURRENT TOPICS

Mr. Charles Harman, K.C.

THE appointment of Mr. CHARLES EUSTACE HARMAN, K.C., as a Judge of the Chancery Division (briefly noted at p. 670, *ante*) is the latest event in a career of high legal achievement. Many consider him to be unequalled as a Chancery advocate, and those who have had the pleasure of hearing him in action can testify to his acuteness and penetration in cross-examination and the lucidity and purity of his style in addressing the court. In his appointment the great traditions of the Chancery Division are upheld. A one-time scholar of Eton College and also of King's College, Cambridge, he served with the Middlesex Regiment in the 1914-18 war and was called to the Bar at Lincoln's Inn in 1921. In 1939 he was elected a Bencher of his Inn, and last year he was appointed vice-chairman of the General Council of the Bar. Mr. Harman is fifty-three, and we respectfully tender him our congratulations and wishes for a long and increasingly successful career on the bench.

The Short Non-Jury List

IT is unfortunately necessary to draw the attention of both solicitors and counsel to the fact that judges have repeatedly in the past months found themselves obliged to comment strongly and, on occasions, to take strong action with regard to cases put into the short non-jury list which on trial are found to last longer than one day. The latest illustration is provided in Mr. JUSTICE OLIVER'S action in refusing on 8th December to hear a case which had been wrongly set down in the short non-jury list. His lordship said that people were trying to have cases heard promptly by under-estimating the time required, and getting them in the short non-jury list when the smallest investigation would show that they were not proper cases for that list. Not only solicitors and their clerks, but also counsel, have a curious propensity to belittle the anticipated length of cases in which they are themselves engaged. The practitioner is familiar with the type of advocate who confidently asserts that he will not be more than ten minutes because his case is only an application, and proceeds to talk for half an hour. A similar tendency is obvious in estimating the length of cases in the High Court. Length depends on the number of witnesses and the elaborateness of their proofs, as well as the points of law involved. Generally speaking, where a difficult point of law is involved, a case is not suited for the short non-jury list, but it is unfair to solicitors and their clerks to expect them to assess its length. Counsel should be asked at an early stage to indicate his view on the subject, so as to give the solicitor some measure of protection against any unpleasant results of a faulty assessment.

Bombed Houses and the Rent Acts

THE Court of Appeal has at last had an opportunity of considering the reinstatement rights of a tenant whose house was destroyed by enemy action and later rebuilt. The case of *Ellis & Sons Amalgamated Properties, Ltd.* v. *Sisman* (*The Times*, 15th December, 1947), will require further consideration when more detailed reports are available, but it appears to be typical of a majority of those which concern practitioners at the moment. The tenancy was a "short tenancy" within the meaning of the Landlord and Tenant (War Damage) (Amendment) Act, 1941, the house was controlled by the Rent Restrictions Acts, and the contractual tenancy had been determined by the landlord before rebuilding operations were completed. On these facts the court held that the tenant had no right to reinstatement. We hope to include a note of the case in our next issue.

County Courts and Rating Appeals

AN unusual attitude to the county court seems to be implied in some observations included in a memorandum submitted to the Minister of Health by the Royal Institution of Chartered Surveyors and published on 8th December. The memorandum contains observations on Pts. III, IV and V of the Local Government Bill, 1947. Under cl. 48 it is proposed that appeals from local valuation courts shall lie to the county court. The Institution frankly states that it "does not like this proposal." "In the first place," it is stated, "a county court is an inexpensive tribunal, a fact which is likely to encourage trifling appeals, merely because the proceedings will not be expensive. In consequence, county courts may find themselves overloaded." Solicitors who have drawn up bills even under Scale B will be surprised to learn that a county court is an inexpensive tribunal. They will be more surprised to learn that the provision of a system of justice which is in the reach of everyone should be discouraged and justice should be expensive, and only within reach of the wealthy, as otherwise the courts will be overloaded. This seems to be a frank negation of all democratic ideas. The other reasons given for not preferring the county courts seem to have much greater force. The Institution says: "The financial limits of jurisdiction are low in the case of county courts . . . Under cl. 48 of the Bill, however, the county court may be required to hear an appeal against a rating assessment of any figure, however high—even up to £100,000, which may represent an effective capital value of perhaps twenty times that amount." The Institution would prefer that appeals from local valuation courts should be heard by a tribunal similar in constitution to that established under the War Damage (Valuation Appeals) Act, 1945, with the same powers and following the same lines of procedure. The flexibility of the War Damage (Valuation Appeals) Panel, which enables it to constitute itself as a tribunal according to the character and importance of the appeal to be heard, would, it is stated, be especially appropriate to appeals in rating cases.

The Haldane Society

According to the annual report for 1947 of the Haldane Society the number of its members, which was 420 at the time of publication of the last report, has grown to 452, made up of 218 barristers and bar students, 234 solicitors and articled clerks, 12 managing clerks, and 2 senior and 10 minor judicial personnel. It also includes 43 Members of Parliament and 17 King's Counsel. It is stated that although the Society is affiliated to the Labour Party, a great many of its members are not members of that party, but merely zealous for law reform and supporters of the Society's activities in that direction. The Society numbers among its members a few Communists, a few Liberals and even a Conservative. The wide scope of the work of the Society in the realm of law reform on such matters as matrimonial causes, justices of the peace, criminal justice and legal aid is sufficiently well known to need no detailed reference. It is interesting to note that a solicitors' sub-committee has met at intervals throughout the year, and two special meetings for solicitor members have been held. The Memorandum on Entry into the Profession, which has the general support of the Solicitors' Managing Clerks' Association, was submitted to The Law Society in March, 1947, and they have agreed to receive a deputation when they have had an opportunity of considering the memorandum. A resolution for the reform of the constitution and charters of The Law Society was, as solicitors know, adopted, and a special committee of The Law Society was appointed at the end of November to prepare reforms. Another sub-committee is considering the question of remuneration of employed solicitors.

Unqualified Estate Agents

The dangers of placing work of a responsible character in the hands of unqualified estate agents are all too little known to the general public, who are not familiar with the acknowledged qualifications. Mr. G. Bernhard, a solicitor, at the annual luncheon of the Valuers', Surveyors' and Estate Agents' Association, drew attention to the risks run in purchasing houses through unqualified persons who had recently set themselves up as estate agents. He said that in one case a contract was drawn up and signed by both parties, but when the title to the property was investigated, it was found that the proposed vendor who had signed the contract was not the owner. Examples of this kind, he said, show that the public need protection. Mr. Bernhard has rendered an important public service. One can only stand amazed at the impudence and recklessness of unqualified and untrained persons who set about selling and letting real property without knowing the first thing about contract law, real property law, registration, landlord and tenant law and, above all, the limits beyond which they are not allowed to go in the conduct of transactions without running the risk of prosecution for "pretending to be a solicitor." It may be difficult in practice to draft a law extending the field of criminal prohibition to the act of "pretending to be an estate agent," and for that reason it is all the more necessary to advertise the fact that the training, examination and experience of the duly qualified agent fits him for those duties of negotiating the sale of interests in real estate, which must be properly performed if contracts and conveyances are to be effective.

What is an Antique ?

Antiques, it is reported, may be imported into the U.S.A. free of duty. Enthusiastic exporters from this country may like to be informed, however, that the U.S. law follows a very conservative definition of antiques, everything manufactured after 1830 being rated as modern. The date was fixed by the U.S. Tariff Act, 1930, which laid down 100 years before 1930 as the birth year of antiques. Legislation must, of course, draw arbitrary lines from time to time in order to make good law, even if it creates hard cases. Whether the affidavit of an expert is required in a doubtful case we do not know, but the difficulties of proof are manifest. There was a dispute some twenty years ago in the English courts about the authenticity of some "antique" furniture, and it may be that the art of reproducing antique models will receive a fillip from the urgent need for exports. The extent to which the U.S. Customs may be deceived will probably not render this a source of many dollars, but one may still be permitted to wonder how the U.S. Customs will establish the authenticity of an antique "beyond a peradventure," when one recalls the acute differences between experts on this subject in our own courts. Our law has not dared to define an "antique," but the Second Hand Goods (Maximum Prices and Records) Order, 1947 (S.R. & O., 1947, No. 1192), excludes from its operation, presumably as antiques, goods which it is proved were made before the 1st January, 1900, and are substantially as originally made.

A Christmas Reminder

For many years it has been our custom at the Christmas season to invite the attention of solicitors to some of the many deserving causes which depend on voluntary support for the fulfilment of their selfless tasks. In these austere times it is not possible to devote an issue specially to this purpose, but the very difficulties of the days in which we live add to the responsibility we bear towards the less fortunate among us. Legal advisers have a special opportunity and therefore a special responsibility in this matter; many a testator looks to his solicitor for guidance not only on technicalities but on the substance of the dispositions to be made in his will. Let none suppose that the social legislation of our day has diminished the claim of charitable institutions upon the generosity of their fellow men; the aged and the very young, the maimed and the blind, the ex-servicemen and women of two world wars—all these and many more must still look to voluntary organisations for assistance. At this time of peace and goodwill let them not be forgotten.

Recent Decisions

In *In re Duke of Wellington, deceased*, on 9th December (*The Times*, 10th December), the Court of Appeal (the Master of the Rolls, and Cohen and Asquith, L.JJ.) upheld the decision of Wynn Parry, J., on the construction of the wills of the sixth Duke of Wellington, who was killed in action in 1943. In 1942 he had made a Spanish will disposing of his Spanish estates and chattels therein to the person who should succeed him as Duke of Wellington and Duke of Ciudad Rodrigo, and in the same year he had made an English will disposing of all his property which would not pass under his Spanish will. The court held that as the testator was domiciled in England, his movable property in Spain passed under English law, but that the immovable property in Spain passed under Spanish law, which was the *lex situs*. It was further held that the Spanish Civil Code showed an intention not to accept the doctrine of *renvoi*; that the Spanish courts could apply the law of the testator's nationality, namely, English law; that as the successors to the two titles were two different persons, the Spanish will became ineffective, and therefore all the property, movable and immovable, went to the seventh Duke of Wellington in accordance with English law.

In *In re Ginger*, on 10th December (*The Times*, 11th December), the Court of Appeal (Tucker and Bucknill, L.JJ., and Jenkins, J.) held that s. 7 (3) (*a*) of the Liabilities (War-Time Adjustment) Act, 1941, as amended by the Act of 1944, did not give the court power to vary a mortgage deed so as to affect payments which had previously been properly made under it, as that proviso was concerned with payments of interest due which had not been made before the date of the court's order. The whole scheme of the Act supported that view, the court held, its object being to make provision in favour of the debtor with regard to debts which had accrued and would accrue in the future.

In *Jenkins* v. *Staines Stadium*, on 11th December (*The Times*, 12th December), Hilbery, J., found that the defendants as greyhound racecourse proprietors ought to have erected a barrier to prevent dog owners from going out on to the track and that, therefore, they were liable for one-quarter of the damage resulting from the plaintiff going out into the middle of the track after a race and being hit by an electric hare. His lordship held that the plaintiff was guilty of contributory negligence and was three-quarters to blame for the accident.

DIVORCE LAW AND PRACTICE

RECENT PRACTICE POINTS

1. *Matrimonial Causes (Amendment) (No. 2) Rules*, 1947

The Matrimonial Causes (Amendment) (No. 2) Rules, 1947 (S.R. & O., 1947, No. 2495), are set out in full in our issue of the 29th November (*ante*, p. 641), and come into operation on the 1st January, 1948.

By r. 2 Bolton is added to the list of Divorce Towns. Rule 3 makes an important amendment to r. 28 of the Matrimonial Causes Rules, which deals with discretion statements. This adds to para. (3) thereof the following proviso, namely: "Provided that where an application is made to a registrar by or on behalf of a party who has filed a discretion statement for leave to give his own evidence by affidavit, the discretion statement shall be open to inspection by the registrar."

2. *Time for filing Discretion Statement*

The reference to a discretion statement leads to a recent case dealing with the time limit within which such a statement should be filed, a decision which is important as recognising the power of the court to exercise discretion in favour of a party where the court has found that he has committed adultery, although this had not been admitted in the petition and therefore the prayer of the petition had not asked for discretion to be exercised in his favour.

In *Jackson* v. *Jackson* [1947] W.N. 287, where a decree *nisi* was rescinded upon an intervention by the King's Proctor alleging adultery by the petitioner, Willmer, J., had found that adultery had been committed, whereupon leave was granted to amend the petition and to ask for the discretion of the court upon counsel for the petitioner expressing his willingness to file a discretion statement. This statement was limited to a recital of the circumstances in which the petitioner had stated on oath that he had stayed at an hotel with a woman, and to a reference to the finding by the court that he had committed adultery there, there being no admission of adultery by him. In granting such leave at that stage reference was made to a decision of the Court of Appeal in *North* v. *North*, a report of which is set out in a note to *Jackson's* case above, where a similar point had arisen. There a respondent husband had admitted spending a night in an hotel with a woman, but he stated that he did not believe that adultery had been committed as he was too intoxicated at the time. Hodson, J., however, found that the husband had committed adultery, but he stated that as the facts were known to the wife and these had been condoned by her there was no reason why he should not exercise his discretion in the husband's favour, having found that certain allegations of adultery of the wife petitioner which had been included in the husband's answer had been made out, and having found that allegations of cruelty and adultery in the wife's petition (which charge of adultery did not include the adultery at the hotel) had not been made out. Leave having then been formally asked for by counsel for the husband and granted, to amend the answer by praying for the exercise of the court's discretion, it was decided that such a statement must be filed, even at that stage, and that it was desirable that it should be on record. In granting leave Hodson, J., stated that he would not pronounce a decree until this was done; the discretion statement, however, did not admit adultery but referred to the finding of the court to that effect. Upon appeal the Court of Appeal observed, in reply to the argument by the wife appellant that the breach of the Rules in not filing a statement within the time specified in the Rules vitiated the decree, that the Rules did not lay down any precise time within which a discretion statement must be lodged, but that even if they did it would have been competent for the court to enlarge the time in the exercise of its discretionary powers. It was further stated that in the circumstances of that case the filing of the statement was a mere formality, but that it was one which must nevertheless be observed. It is hoped that there will be a fuller report of this case which will indicate the grounds upon which the filing of a statement under these circumstances was ordered. While it is respectfully agreed that the statutory discretion of the court to grant a decree notwithstanding a finding by the court that the petitioner, or respondent, has committed adultery which was not admitted by him cannot be limited in any way by rules made under the statute which gave the court the discretion (cf. *Luccioni* v. *Luccioni* [1943] P. 49, where it was held that the discretion given by the proviso to s. 42 of the Matrimonial Causes Act, 1857, to dispense with service of a petition in certain circumstances cannot be fettered by general rules or conditions), it is a little difficult to see how rules made for the guidance of the court and the protection of the party lodging the statement in a case where he admits his adultery and prays the court, notwithstanding that admission, to exercise its discretion under its statutory powers and to grant him a decree (see r. 28), can be applicable where there has not been, and is not even at that stage of the proceedings, an admission of adultery, but where the court has expressed its intention to exercise discretion in favour of the petitioner or respondent having found at the hearing that adultery has been proved against him. (For an article dealing with the "Law and Practice of Discretion Statements," see 200 L.T. 193.)

3. *Application by a Spouse to make absolute a Decree Nisi pronounced against him*

The importance of complying strictly with the requirements of the Matrimonial Causes Rules where application is made by a spouse to make absolute a decree *nisi* which has been made against him is shown by the decision in *Woolfenden* (*otherwise Clegg*) v. *Woolfenden* (*otherwise Clegg*) [1947] 2 All E.R. 653. It will be remembered that the amendment of s. 183 of the Supreme Court of Judicature (Consolidation) Act, 1925, by s. 9 of the Matrimonial Causes Act, 1937, provides that: "(3) Where a decree *nisi* has been obtained . . . and no application for the decree to be made absolute has been made by the party who obtained the decree, then, at any time after the expiration of three months from the earliest date on which that party could have made such an application, the party against whom the decree *nisi* has been granted shall be at liberty to apply to the court and the court shall . . . have power to make the decree absolute . . . ." Rule 40 (3) of the Matrimonial Causes Rules, 1947, provides: "An application by a spouse to make absolute a decree *nisi* pronounced against him shall be by summons to the registrar, accompanied by a Notice of Application in Form 14, on not less than four days' notice. . . ." In *Woolfenden's* case a decree *nisi* had been pronounced on 5th May, 1947, on the answer of a wife respondent upon the ground of desertion by the husband petitioner, and on 24th June, 1947, an application was made on behalf of the husband petitioner by his solicitors for the decree to be made absolute, and on the same day this application was granted by the registrar. It appeared, however, that no summons had been taken out before the registrar, as required by sub-r. (3), and no notice had been served on the wife respondent, and three months had not elapsed from the earliest date on which the wife respondent could have applied to have the decree made absolute as required by the statute. It was held in these circumstances that the making of the decree absolute could not be treated as a mere irregularity, but that it must be treated as a nullity, and upon the application of the wife respondent the certificate under the seal of the registry dated 24th June, 1947, that the decree was made absolute was set aside. (In connection with an application to make absolute a decree *nisi* attention may once more be drawn to the substitution by r. 10 of the Matrimonial Causes (Amendment) Rules, 1947, of a new paragraph instead of para. (1) of r. 40 of the 1947 Rules where the application is made by the spouse in whose favour the decree *nisi* has been made.)

COMPANY LAW AND PRACTICE

CONTINGENT CLAIMS IN A WINDING UP—I

IT is often extremely difficult to ascertain the true position regarding contingent claims in the winding up of a company, and on this point it is by no means easy to understand the principles laid down in the books. One reason for this is that two of the most common of these kinds of claims have rules specially applicable to themselves which are not applicable generally.

The question of possible future liability which a company may incur, for example, under repairing covenants contained in a lease of premises of which it is in possession, falls to be considered in relation to the rights of proof of lessors generally in a winding up. The most usual kind of contract, however, by which one person binds himself to pay a sum of money on the happening of some uncertain future event is probably contracts of insurance, and the majority of these probably consist of fire, accident and employer's liability policies. Claims under all these policies have to be proved at the value ascertained in accordance with the rules laid down by the Assurance Companies Act, 1909, and consequently the principles applicable to the sort of contingent liability arising under those contracts are not necessarily applicable to other forms of contingent liabilities.

Such liabilities may arise in various ways, and one way in which a person may have a contingent claim against a company will be if he originally granted a lease to the company and the company has assigned the lease. In that case he will have a contingent claim against the company in the event of the assignee not paying the rent. This, unlike other claims in connection with a lease, is presumably in exactly the same position as any other claim against a company which may arise on the happening of some uncertain future event.

Now in the case of insolvent companies the person having such a claim will have to prove in respect of it. Section 261 of the Companies Act, 1929, provides, *inter alia*, that all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts and claims as may be subject to any contingency or sound only in damages or for some other reason do not bear a certain value.

Similarly the Bankruptcy Act, 1914, re-enacting the provisions of the Act of 1869, provided that contingent liabilities were to be deemed debts provable in the bankruptcy and to be estimated by the trustee, save that if any person aggrieved by that estimate appealed to the court, the court might, if it thought the value of the liability incapable of being fairly estimated, so order, and thereupon the liability should be deemed to be a debt not provable in the bankruptcy (s. 30).

That position was achieved after considerable efforts had been made to enable all the bankrupt's liabilities to be disposed of in the bankruptcy, the first time that any contingent debts had become provable being under 6 Geo. 4, c. 16 (1825). The effect of the court holding that the contingent liability could not be fairly valued was, of course, that no proof could be admitted and consequently if the contingency occurred subsequent to the bankrupt's discharge the bankrupt could be sued for the amount that had become due, and it was to avoid this possibility that the various amendments of the law as to contingent claims had been introduced.

After the Act of 1869 it would only be in the rarest cases that the court would hold that a contingent liability was not capable of being fairly valued. In *Hardy* v. *Fothergill* (1888), 13 App. Cas. 351, an indemnity given by assignees of a lease to the lessees against damages for breaches of covenants contained in the lease to repair and to yield up in repair at the end of the term was held by the House of Lords to be able to be so valued. In that case Lord Halsbury said: "It is true that such liabilities as are now in question are not sufficiently common, or perhaps I should say are not so much in the habit of being estimated; but what is there in the nature of the thing that renders it less capable of being estimated? The word 'value' itself is one upon which subtle distinctions might be taken, but the moment you introduce contingency as one of the elements which is to enter into the question of value it is apparent that you introduce the element of conjecture and opinion and get out of the region of actual fact. I do not therefore see why if any contingent liability can be valued this cannot be valued . . ."

Similar considerations will clearly apply to the contingent liabilities of companies where those companies are being wound up and are insolvent. If in such a case a person has a contingent claim against the company he must prove for it, in this case himself estimating the value. There is one point in this connection that requires to be noticed. If he does this and subsequently during the course of the winding up the contingency occurs, he may then alter his proof and prove for the full amount, not, however, so as to disturb any dividends that may have been previously paid in the winding up (*Macfarlane's Claim* (1881), 17 Ch. D. 337). Probably the proper way of estimating the liability of a company to pay a sum on the happening of some future event is to take the premium a person would have to pay at the date of the winding up to induce some other person to enter into a similar bargain.

There remains the question of what is to happen in the case of such contingent claims in a winding up where the company is solvent, and in this connection we shall have to consider the meaning of the phrase "enter a claim" that occurs on p. 521 of "Buckley," 11th ed. This inquiry will, however, have to be postponed to next week.

A CONVEYANCER'S DIARY

OPTIONS TO PURCHASE—II

BEFORE proceeding further with our inquiry into the nature of options to purchase and the conditions in which such covenants are valid, it is necessary to say a few words about registration. An option to purchase is registrable as a Class C Land Charge (Land Charges Act, 1925, s. 10 (1)). An option created after 1925, or created before 1926 and assigned after 1925, is void against a purchaser for valuable consideration of the land affected unless it is registered before the completion of the purchase (*ibid.*, s. 13 (2)). These provisions should be borne in mind, but in the remarks that follow I will assume that the provisions have been duly complied with.

The first question that arises is the extent to which the contracting parties themselves are bound by an option to purchase that is, in all respects as to form and consideration, completely valid, and the respective rights and liabilities of the contracting parties in this regard. If the option is granted in such terms that it can only be exercised within the period permitted by the rule against perpetuities (as in the common example of a lease for a period not exceeding twenty-one years containing an option to purchase the reversion exercisable at any time during the term), there is clearly no difficulty: the lessor (subject to the lessee fulfilling any conditions as to notice and the like) is bound to convey, and if he refuses the lessee may proceed against him either by way of an action for specific performance or by action for damages. The position is the same if the option is exercisable at a time which may not necessarily arise within the perpetuity period, e.g., if,

in the example given above, the term is for thirty years. The case then falls within the principle of *L.S.W.R.* v. *Gomm* (1882), 20 Ch. D. 562 (see *Woodall* v. *Clifton* [1905] 2 Ch. 257). In such a case if the lessor refuses to convey when requested so to do by the lessee in the terms of the option, he is, of course, liable in damages for breach of covenant. But it has, further, been generally considered that the lessee would also, in these circumstances, be able to enforce his option by an order for specific performance. The authority cited for this proposition is *South Eastern Railway Co.* v. *Associated Portland Cement Manufacturers, Ltd.* [1910] 1 Ch. 12, a case in which it was held by the Court of Appeal that the rule against perpetuities had no application to personal contracts, and an injunction to restrain the covenantees from taking certain steps which, in their contention, they were entitled to take under a certain covenant, was refused. The decision did not turn on an option to purchase, but the principles applicable to the covenant under consideration in that case are not easily distinguishable from those underlying the law of options. In the more recent case of *Rider* v. *Ford* [1923] 1 Ch. 541, a contrary principle was applied. The original lessor brought an action against the original lessee, asking for a declaration that the lessee was not entitled to the benefit of an option whereby the lessor had undertaken either to convey the freehold, or to grant a long lease to the lessee. The covenant was unlimited in point of time, and so infringed the rule against perpetuities; it was held that the option to purchase the freehold was invalid by reason of the rule against perpetuities, but that the option to take a new lease, not being affected by that rule, was valid and binding on the lessor. The *Portland* case was not cited, either in argument or in the judgment, and it is doubtful whether the decision in *Rider* v. *Ford*, *supra*, was correct. I conceive, therefore, that as between the covenantor and the covenantee an option to purchase (if duly valid in other respects) is always enforceable by an action for specific performance, provided that the land is still in the hands of the covenantor.

It may be noted, before passing from *Rider* v. *Ford*, *supra*, that the decision as to the validity of the option to take a new lease in that case rests on good authority. Such a covenant contained in a lease is, in effect, a covenant to renew, and covenants to renew have always been regarded as running with the term and with the reversion. As such they are, unlike collateral covenants, outside the perpetuity rule (see *Woodall* v. *Clifton*, *supra*, *per* Romer, L.J., at p. 279). The distinction is anomalous, but it cannot now be questioned.

Much more difficult questions arise when the validity of an option has to be considered in relation to persons other than the original contracting parties. An option to purchase is a right with a two-fold character. In the first place it is a contractual right, and so subject to the rules regulating the devolution of contractual rights and liabilities either by operation of law or as the result of assignment *inter partes*. But an option is also potentially a limitation of land, as has already been seen, and in that capacity an option is subject to certain equitable doctrines affecting its validity and the remedies available on a breach thereof. It is, therefore, frequently necessary to examine the case, where an option devolves on persons other than the original contracting parties, from two angles—the common law angle and the equitable angle. So viewed, the aspect is not necessarily always the same.

In the case of devolution by operation of law (I prefer not to use the expression "assignment by operation of law" in this context, although it is often so used)—that is to say, most commonly in the case of the death of one of the contracting parties—both the burden and the benefit of an option to purchase pass to the personal representatives of the deceased, so as to bind the representatives of the covenantor and to enure for the benefit of the estate of the covenantee. If the covenant does not infringe the perpetuity rule, then on the death of either of the original parties the covenant passes to, and is enforceable by or against, the representatives of the covenantor or covenantee (as the case may be) by action either for specific performance or for damages. There is no precise authority for the proposition that an order for specific performance will be made against, or at the instance of, a personal representative in such a case, but I can see nothing in principle to prevent such a conclusion. As to damages, this proposition does nothing more than follow the common law rule that on the death of one of the parties to a contract his rights and liabilities thereunder pass to his personal representatives.

But if the option infringes the perpetuity rule, the devolution of the burden and the benefit of the covenant to personal representatives must be considered separately. Both the burden and the benefit devolve, but the remedies available differ. If the covenantor dies, his estate is liable in damages for any breach of the covenant occurring before or after his death, but if the breach occurs after the covenantor's death, the covenantee is not entitled to an order for specific performance to carry the option into execution against the personal representatives of the covenantor (*Worthing Corporation* v. *Heather* [1906] 2 Ch. 532). If, however, the covenantee dies, his personal representatives may enforce the covenant by an order for specific performance against the covenantor personally (*South Eastern Railway Co.* v. *Associated Portland Cement Manufacturers, Ltd.*, *supra*); or if the covenantor has by the time when the breach occurs parted with the land, or (if the land is still in the covenantor's hands) at any time at the choice of the covenantee's personal representatives, by an action for damages. *Re Adams and Kensington Vestry* (1884), 27 Ch. D. 394, shows that an option contained in a lease is attached to the lease, and passes with it to the lessee's administrator; but that case is no authority on the validity of an option, which was there admitted.

The result of the decisions can be summarised as follows: An option which is exercisable only within the perpetuity period devolves upon the personal representatives of the original contracting parties, so as to be exercisable either by or against the personal representatives of a deceased covenantee or covenantor by an order for specific performance—with this necessary qualification, however, that if the covenantor or his representatives have parted with the land at the time that action is brought, the remedy of the covenantee or his representatives lies in damages only. An option which may be exercisable outside the perpetuity period will bind the land in the hands of the covenantor, so as to be enforceable by an action for specific performance at the suit of the personal representatives of a deceased covenantee (or by action for damages, if that remedy is preferred), but will not so bind the land in the hands of the personal representatives of a deceased covenantor. In the latter case the only remedy open to the covenantee (or to his personal representatives if he is dead) is an action for damages for breach of covenant.

There is no authority, apparently, covering the rights and liabilities of persons on whom the burden or benefit of an option to purchase devolves by operation of law in events other than the death of one of the contracting parties; but in principle there seems to be no reason why the position of a trustee in bankruptcy, for example, or the liquidator of a company, should not be regulated by the analogous rules applicable to personal representatives.

The final question—the extent to which options to purchase may be effectively assigned *inter partes*—must wait until next week.

OBITUARY

Mr. M. J. BARHAM

Mr. Milton Joseph Barham, solicitor, of Messrs. Wood and Barham, of Woodbridge, Suffolk, Clerk to the Woodbridge Division Justices since 1936, died on 2nd December, aged sixty-two. He was admitted in 1926.

UNITED LAW SOCIETY

At a meeting of the United Law Society in the Barristers' Refreshment Room, Lincoln's Inn, on Monday, 8th December, with Mr. F. R. McQuown in the chair, the motion "That the present grounds for divorce are too restricted," was carried by nine votes to six, the attendance being eighteen, including three visitors.

LANDLORD AND TENANT NOTEBOOK

RELIEF AGAINST FORFEITURE: FIXED COSTS

I RECENTLY had the pleasure of listening to part of an argument concerning county court judges' power, or lack of power, to award costs to a landlord whose tenant had incurred forfeiture for non-payment of rent but revived the lease by timely payment of arrears and costs into court. It appeared that the landlord had had to spend more in the way of costs than the sum named in the summons, and sought an order for payment of the balance or part thereof. The learned judge, after remarking that there might well be some authority on the point in the older cases in equity, decided that he had no power to grant the application.

The position is governed by the County Courts Act, 1934, s. 180, by the County Court Rules, Ord. 47, r. 36, and by Table V of Appendix D to those rules.

By s. 180 (1) of the statute, " where a lessor is proceeding by action in a county court . . . to enforce . . . forfeiture in respect of any land for non-payment of rent . . . (*a*) if the lessee pays into court not less than five clear days before the return day all the rent in arrear and *the costs of the action*, the action shall cease . . . "

By Ord. 47, r. 36 (1), " Appendix D . . . shall have effect for the purpose of showing the items and total amount of solicitor's charges which, if all the items have been earned, may according to the scales of costs be allowed in the several cases to which Appendix D applies." By r. 36 (2), " In a case to which Appendix D applies, the party entitled to costs may receive or recover *the amount entered on the summons* in accordance with the tables set out in Pt. I of Appendix D . . . notwithstanding that the costs have not been taxed."

Appendix D, para. 1 (1), says: " Tables I to IV . . . show *the amount to be entered on the summons* in respect of solicitor's charges in an action for the recovery of a sum of money," etc., while para. 2 (1) provides: " The purpose of Table V . . . is to apply Tables I and II to a summons in an action for the recovery of land." And Table V specifies three sums, of £5, £10 and £20 to be entered, according to rent or value of the property claimed.

Briefly, then, the learned judge's decision, as I understood it (no reflection is, of course, implied: it was I who was unable to give wholehearted attention to the proceeding) was that the phrases which I have italicised above meant exactly the same thing. (Indeed, if they did not, the action would not have ceased and relief would have had to be provided for by orders under paras. (*b*) and (*c*) of s. 180 (1), both of which speak of " all the rent in arrear and *the costs of the action*.")

It is, I think, fair to say that if the several phrases do mean the same thing, this is due to accident rather than to design. For it is pretty obvious that the draftsman of s. 180 (1) of the Act was merely repeating, with improvements, the Common Law Procedure Act, 1852, s. 212: " If the tenant . . . do or shall, *at any time before the trial* . . . pay into the court where the same cause [ejectment for the recovery of demised premises by landlord re-entering for the non-payment of rent—s. 210] is depending, all the rent and arrears, together with the costs, then and in such case all further proceedings on the said ejectment shall cease and be discontinued." The differences include not only the provision for five clear days, but also express differentiation (see subs. (3)) between cases in which the landlord brings an action and cases in which he re-enters without legal process, though Stirling, J., held such an event to be covered by s. 212 in *Howard* v. *Fanshawe* [1895] 2 Ch. 581.

The judgment in question contains a useful review of the circumstances which ss. 210–212 of the Common Law Procedure Act, 1852, were designed to deal with. Essentially, the object was to limit the power of courts of equity, by imposing a six months' limit after execution when the landlord had obtained judgment (s. 210), and making payment of " full costs " a condition of relief. By s. 211, the tenant claiming relief must bring into court whatever the landlord swears to be due and also the costs taxed in the suit. But s. 212, as we have seen, which enables the tenant not merely to call a truce but end the proceedings altogether before trial, merely speaks of " the " costs.

But the facts were that the defendant landlord in *Howard* v. *Fanshawe* had taken actual possession, and in these circumstances relief was granted on terms that the plaintiff paid the rent and paid the costs of the action except in so far as they had been increased by some resistance shown by the defendant. In another Chancery case, *Humphreys* v. *Morten* [1905] 1 Ch. 739, relief was sought by a sub-underlessee after judgment had been obtained, without the plaintiff's knowledge, against the underlessee, and a similar order was made.

More assistance is, it so happens, likely to be derived from a common law decision, that in *Croft* v. *London & County Banking Co.* (1885), 14 Q.B.D. 347 (C.A.), though again the facts concern proceedings taken after judgment for possession had been obtained. That judgment was, however, against someone else, the grantee of the lease; when the plaintiff landlord found that he was not in possession and that his trustee in bankruptcy had in fact assigned the lease to the defendants, they offered him the arrears of rent. He, however, complaining of other breaches of covenant covered by the forfeiture clause, refused the money and brought an action in which he failed to prove the other breaches. The defendants had meanwhile paid the arrears, without costs, into court, and they took out a summons for relief which was granted on payment of the arrears only. This decision was upheld, the most important passage from the judgments for present purposes being one from that of Brett, M.R.: " . . . The case must be looked at as if it had been heard in a court of equity, and I think the provision as to payment of costs in s. 210 of the Act of 1852 does not limit the discretion of the court at the hearing of the application for relief."

If one were to seek to apply this statement of the law to the situation described in my opening paragraphs, accepting, as it were, the invitation implied in the county court judge's remarks, one would argue that what applied to s. 210 of the Act of 1852 applied to s. 212 of that Act and to s. 180 of the County Courts Act, 1934; also, that the " Fixed Costs " provision of Ord. 47, r. 36, does not limit the discretion. I think the line of reasoning would be something like this: that rule contemplates a taxation of costs (it is in a part headed " Taxation and Review ") in an action or matter rather than on the sudden determination of an action by a party availing himself of a remedy provided by another statute; or, in so far as discretion is thereby limited, they rule *ultra vires* the rule-making powers conferred by s. 99 of the Act.

TO-DAY AND YESTERDAY

LOOKING BACK

HENRY COOK for a long time doubled the roles of shoemaker and highwayman. His father had given him a decent education and set him up in business at Stratford, in Essex, where he married and had three children, but he fell into bad company, neglected work, ran into debt, began robbing poultry yards and fish ponds and finally had to abscond. When his funds ran out he took to the road and became as great a terror to travellers as his contemporary Turpin himself. Once at the Old Bailey he was acquitted of horse-stealing for want of identification. He then returned to his wife at Stratford, working at his trade and executing robberies in Epping Forest, first alone and afterwards with his journeyman. They were long unsuspected till the journeyman was shot dead by a traveller and the body was found and recognised. Cook fled but continued his career as a highwayman, though for a while he followed his original trade, first at St. Albans, and then at Birmingham, where he hired a housekeeper " who soon became his more intimate companion."

Taking her to race meetings and other entertainments soon got him into financial difficulties, and he went off, ostensibly to collect an allowance from an aunt but really to rob. Finally he had occasion to abscond again but he was arrested in a London public-house, tried for a robbery near Highgate, and condemned to death. Before trial he offered to turn King's evidence against accomplices and, that failing, formed a plan to murder his keepers and escape. After sentence he first behaved with gaiety, but later broke down in convulsive fits. He was hanged at Tyburn on 16th December, 1741.

PEERS AND COURTS MARTIAL

LORD COLWYN'S court martial at Chelsea was an interesting reminder that peers are not always tried with picturesque ceremony by their fellows. In the first place, when, as in the Kylsant case in 1931, the crime charged is a misdemeanour, the ordinary courts have jurisdiction. In the case of a trial by court martial the Crown informs the House of Lords of the arrest and an address of thanks to His Majesty is resolved upon " for his tender regard to the privileges of this House." In such an event the probability is that the peer concerned is a senior officer and that the circumstances are of public moment. That was certainly the position in the case of the Earl of Torrington. In 1689 William of Orange had raised him to the peerage, partly, no doubt, in recognition of services rendered in the revolution which had just secured him the Crown and partly to conciliate the Navy. In the following year a powerful French fleet appeared off the English coast and there was a genuine invasion scare. The English and Dutch forces under Torrington were considerably weaker, but in obedience to orders he engaged the enemy off Beachy Head, drawing off after the Dutch, who attacked too recklessly, had suffered severely. Though the invasion did not eventuate, there was much public indignation against him. His impeachment was considered, but it was thought more proper to proceed by court martial and he was tried at Sheerness on a charge of not having engaged the enemy when it was his duty to do so. In his defence he urged the probability of disaster had he not acted cautiously. The court acquitted him and posterity has endorsed its verdict.

LORD GAMBIER'S CASE

A SOMEWHAT similar case was the court martial of Lord Gambier in 1809. He had earned his peerage two years previously when he commanded the force which bombarded Copenhagen and took possession of the Danish fleet. Subsequently he commanded the Channel Fleet at the time the French fleet was blockaded in the Basque Roads. The enemy being thus bottled up, it was realised that here was a chance to destroy his ships at one bold stroke, and that the best man to do it would be Lord Cochrane, son of the Earl of Dundonald, who, as one of the younger generation of naval officers, had earned a great reputation for dash and originality. Accordingly he was sent out with a flotilla of fireships and explosion vessels, the latter something in the nature of a secret weapon, being loaded with 1,500 barrels of gunpowder, the detonation of which was calculated to have a considerable moral as well as material effect on the enemy. Unfortunately Gambier and Cochrane were strongly antipathetic to each other and the Admiral gave the enterprise so little support that the success was only partial. In the face of subsequent criticisms Gambier was tried by court martial at Portsmouth, but the Admiralty saw to it that a personal friend of his presided, and he was " most honourably acquitted " by a lenient tribunal.

CORRESPONDENCE

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL]

Finance Act, 1947, s. 54: Certificates of Value

Sir,—I have read with interest the article in " A Conveyancer's Diary," in your issue dated 1st November, 1947, and am writing to inform you that in my experience the advice given in the concluding paragraph has not met with any favourable response from the local Stamp Office.

I have recently had two transactions, in both of which I was acting for the purchaser of a business. In both cases a sale and purchase agreement was entered into which provided for the transfer of a lease, and goodwill, and loose effects, and the consideration was apportioned.

In the first case the total consideration was £2,000, which was apportioned as follows :—

Goodwill—£1,400 ; Lease—Nil ; Loose effects—£600.

In this case the Stamp Office refused to accept the usual certificate that the transaction did not exceed £1,500, on the grounds that the sale of the loose effects was part of the same transaction, and although not subject to duty, had to be taken into consideration for the purpose of the certificate. Accordingly duty was paid at 2 per cent. on £1,400.

In the second case the total consideration was £1,700, which was apportioned as follows :—

Goodwill—£1,300 ; Lease—£100 ; Loose effects—£300.

A certificate was inserted in the agreement for sale that the transaction did not form part of a larger transaction or series of transactions, and an assignment of the lease was taken, but no assignment of the goodwill. When the agreement was presented for stamping, the Stamp Office again refused to accept the certificate, this time on the ground that the certificate related only to the items subject to duty, and therefore could not be given in respect of the goodwill, because it formed part of a larger transaction. I admit that if the certificate were accepted in this case it would be difficult to see how the duty should be assessed. The Stamp Office maintain that duty at 2 per cent. should be paid on the consideration for the goodwill and lease.

The two instances seem to me to be inconsistent, and the second appears to indicate an anomaly in the Finance Act, 1947. I cannot see the reason for the difference between the certificate when the transaction does not exceed £1,500 and when it is between £1,500 and £1,950. As my second instance shows, the difference may well be material.

Birmingham. WILLIAM HADGKISS.

[Our Contributor writes :—The usual practice of conveyancers has been to disregard the price paid for loose effects (which *per se* do not attract duty) whenever the question arises whether or not to include a certificate of value in an instrument—see, for example, Encyclopædia of Forms and Precedents (3rd ed.) VI, pp. 817–8. On the authorities I think this is correct, and the attitude of the local Stamp Office in this case open to question. The difficulty, of course, is that in the absence of a decision on this precise point the Commissioners hold the whip hand. If the practice reported by the writer of this letter is general, the position is certainly unsatisfactory.]

Valuation of Value Payments

Sir,—We are having an argument with the Inland Revenue as to the proper method of valuing, as at the date of a death in 1944, value payments in respect of properties damaged before that date.

We shall be most grateful if any of your readers who have heard of a value payment being dealt with in the open market can give us particulars. The matter must be one of considerable interest to solicitors in general.

MAY, MAY & DEACON.

London, W.C.2.

RECENT LEGISLATION

STATUTORY RULES AND ORDERS, 1947

No. 2576. **County Court** (Crown Proceedings) Rules. December 1.

No. 2607. **Price-Controlled Goods** (Restriction of Resale) (No. 2) Licence. December 4.

No. 2530. **Supreme Court, England,** Procedure, Rules (Crown Proceedings). November 26.

DRAFT STATUTORY RULES AND ORDERS, 1947

(Published December 9)

Double Taxation Relief (Taxes on Income) (Aden Colony) Order.

Double Taxation Relief (Taxes on Income) (Antigua) Order.

Double Taxation Relief (Taxes on Income) (British Honduras) Order.

Double Taxation Relief (Taxes on Income) (Gambia) Order.

Double Taxation Relief (Taxes on Income) (Gold Coast) Order.

Double Taxation Relief (Taxes on Income) (Montserrat) Order.

Double Taxation Relief (Taxes on Income) (Nigeria) Order.

Double Taxation Relief (Taxes on Income) (Nyasaland) Order.

Double Taxation Relief (Taxes on Income) (Palestine) Order.

Double Taxation Relief (Taxes on Income) (St. Christopher and Nevis) Order.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2.]

The next quarter sessions of the peace for the Borough of Wolverhampton will be held at the Sessions Court, Town Hall, North Street, Wolverhampton, on Friday, 9th January, 1948, at 10 a.m.

NOTES OF CASES

CHANCERY DIVISION

Re Jones; Williams v. Rowlands

Roxburgh, J. 6th November, 1947

Will—Condition subsequent—Defeasance—Residuary bequest and devise for erection of village hall—Gift to lapse if hall not erected within five years of death of testatrix—Failure of trustees to provide funds within required period.

Adjourned summons.

A testatrix, who died in January, 1940, after providing for certain pecuniary legacies, devised and bequeathed the residue for the purpose of providing a hall for the village of L, with a gift over upon a certain contingency. The will provided, by cl. 1, that "a freehold site . . . shall be purchased" by the trustees . . . "and conveyed into the joint names of the persons (hereinafter called the institute trustees) who may at that time hold" certain named offices. By cl. 2 the trustees of the will were to invest the residue and to accumulate the income "for a period of five years from my death or until such time as the institute trustees shall have completed the said village hall," when the trustees of the will were to sell the investments and pay the proceeds and accumulated income to the institute trustees. Clause 3 directed that the trustees of the will should not be responsible for building the hall and that they should be under no obligation until the hall had been built. By cl. 4: "Provided always that in the event of the said institute trustees having failed to complete the . . . hall . . . within five years from my death then the bequest herein contained shall lapse and the said site shall be sold and the proceeds of such sale and the residue of my . . . estate" shall be disposed of for certain other purposes. At her death the testatrix had investments and chattels worth £1,300 and also a leasehold and a freehold house at Folkestone. The Folkestone properties were then unsaleable, owing to war conditions, and the other assets were insufficient to meet in full the expenses and legacies. In May, 1945, the leasehold house was sold and provided a balance of £400 after payment of the balance of the legacies. It was possible that the freehold house could shortly be sold at a satisfactory price. The trustees stated that nothing had been done because they were unable to find a suitable site and had no money available for a purchase. The summons was taken out to ascertain whether the condition subsequent in the proviso was to take effect.

ROXBURGH, J., said that the trustees of the will had failed to perform an imperative trust, though, under the circumstances, they could not have acted otherwise. There was little authority, but *Lechmere* v. *Earl of Carlisle* (1733), 3 P. Wms. 211, and *Scudamore* v. *Scudamore* (1720), Prec. Ch. 543 (both cited in Lewin on Trusts, 14th ed., pp. 799–800), showed that a forbearance of trustees in not doing their office should not prejudice *cestuis que trust*, as otherwise it would be in the power of trustees to affect the rights of others. The principle indicated was so fundamental in equity that in approaching a defeasance clause such as the clause in suit the court would assume that the testatrix did not intend that an omission of the trustees should have any effect, unless she said so in words plain beyond peradventure. There was also a principle that a condition subsequent must be construed with strictness (*Yates* v. *University College, London* (1875), L.R. 7 H.L. 438). The gift of the hall could be supported on two alternative grounds: either the condition subsequent must be read as subject to an implied overriding condition that the trustees had performed their imperative trust, or, alternatively, construing the condition subsequent narrowly, the institute trustees could not be said to have "failed to complete the hall," because they could not fail to complete a thing which they had not been allowed to begin. The trust was valid and effective.

COUNSEL: *R. Gwyn Rees; Richmount; H. E. Francis; Thomas Dawson; D. H. McMullen; Danckwerts.*

SOLICITORS: *Helder, Roberts, Giles & Co.*, for *Walters and Williams*, Carmarthen, and *W. H. Rogers*, Carmarthen; *T. D. Jones & Co.; Geo. W. Bower & Son; Bird & Bird; Treasury Solicitor.*

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

Gott v. Measures

Lord Goddard, C.J., Humphreys and Croom-Johnson, JJ.

28th October, 1947

Malicious damage—Dog chasing game—Shooting by owner of sporting rights in land—Malicious Damage Act, 1861 (24 & 25 *Vict. c.* 97), *s.* 41.

Case stated by Parts of Lindsey Justices.

The defendant, having seen a dog belonging to the prosecutor chasing and killing game on several occasions on land over which he (the defendant) had sporting rights, shot and killed the dog. The defendant having been prosecuted under the Malicious Damage Act, 1861, for unlawfully and maliciously killing the dog, the justices dismissed the information, considering themselves bound by *Daniel* v. *Janes* (1877), 2 C.P.D. 351. They held that, as the defendant had shot the dog in defence of his property and without malice on land on which he had full sporting rights, he was not liable. The prosecutor appealed.

LORD GODDARD, C.J., said that the offence charged was "unlawfully and maliciously," and if an unlawful act were done wilfully the law implied malice, although, as was said in *Bromage* v. *Prosser* (1825), 4 B. & C. 247, malice might be rebutted. The law here was not really in any doubt. A person might be justified in shooting a dog if he honestly believed that that was necessary as being the only way in which he could protect his property. Therefore, if a farmer found a dog driving his flock of ewes or chasing his sheep, which might cause him incalculable damage, it might be that the only way in which he could protect his flock was by shooting the dog, in which case he might do it. The defendant here had no property in anything: he had the sporting rights in the land; either by leave and licence or by virtue of a grant he was entitled to go on the land for the purpose of hunting game; but he had no property in the game and no property in the land. He had no property in the game until he had reduced it into possession. Neither a person owning the sporting rights over land nor the landowner himself had any property in wild game, for example, a covey of partridges or wild pheasants. If he had pheasants in breeding pens, that was another matter, for they were in the same position as domestic fowls. He had no property in a hare unless and until he had shot and taken it. Therefore, when this dog was shot, the defendant could not reasonably have believed that he was entitled to shoot it in protection of his property, for that would have been a reasonable belief in something which the law did not recognise. A man could not honestly believe that it was necessary to shoot a dog to protect his property when he had no property to protect. *Daniel* v. *Janes, supra*, having been cited to the justices, it was easy to understand their coming to a mistaken view of the law. The case must go back to the justices with an intimation that the offence charged was proved.

HUMPHREYS and CROOM-JOHNSON, JJ., agreed.

COUNSEL: *Beney*, K.C., and *Heathcote-Williams; Holroyd Pearce*, K.C., and *J. W. Russell.*

SOLICITORS: *Slone & Slone; Corner & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Jelic v. Co-operative Press, Ltd.

Denning, J. 23rd November, 1947

Practice—Libel—"Rolled-up plea"—Interrogatories permissible.

Appeal to judge in chambers.

In an action for libel the defendants pleaded the "rolled-up plea," namely, that in so far as the words complained of consisted of statements of fact they were true, and in so far as they consisted of comment they were expressions of opinion uttered without malice on a matter of public interest. The master having allowed certain interrogatories, the plaintiff appealed to Denning, J., who adjourned the matter into court for judgment. (*Cur. adv. vult.*)

DENNING, J., in a written judgment, said that he was prepared to allow any interrogatories which would help the defendants to prove the case made by them on the pleadings. The only relevant plea was the "rolled-up plea," which had been held by the House of Lords to be a plea of fair comment only and by the Court of Appeal not to be the subject of further particulars. Under that plea the defendants had to prove that the statements of fact contained in the words were true. Interrogatories were permissible, therefore, to prove that those statements were true; and for that purpose the defendants were not to be confined to interrogatories framed in the very words of the statements, but might administer any interrogatories which were relevant as leading to the inference that the statements were true. Under the plea, however, the defendants had not to prove that the expressions of opinion contained in the words were true, but only that they were fair comment. Interrogatories, therefore, were not permissible simply to prove that the expressions of opinion or comment or innuendoes were true. Therein lay the difference between a plea of fair comment and a plea of justification: if the defendants had pleaded justification, they would have had to prove that the expressions of opinion, the comment and the innuendoes were true, and the scope of interrogatories on their behalf could have been correspondingly enlarged. Under the "rolled-up plea," moreover, the defendants had not to prove that any statements of facts were true except

those contained in the words. Interrogatories were, therefore, not permissible simply to prove that other facts were true. Therein lay the difference between the "rolled-up plea" and a general plea of fair comment: if the defendants were asserting that they had commented on any other facts than those contained in the words, they would have to plead them and to specify them with reasonable particularity; and they would then be entitled to administer interrogatories to prove those other facts. When the defendants, however, confined themselves to the "rolled-up plea," they were committing themselves to the assertion that they were only commenting on the facts which they had set out in the words complained of. They thereby gained an advantage in point of pleading in that they were not compelled to give any particulars of that assertion; but they must take that advantage with the corresponding disadvantage that they were confined to those facts and would not be allowed to assert, for the purposes of interrogatories or at the trial, that any other facts formed the basis of their comment. In applying those principles he (his lordship) was not disposed to extend the benefits of the "rolled-up plea," which had been severely criticised by Scrutton, L.J., and Lord Atkin. A defendant who pleaded that plea alone might not interrogate to the same extent as if he had pleaded justification or fair comment generally. In the present case most of the interrogatories were directed to prove "the unsavoury history of this member of the Ustashi secret organisation." The only fact there stated was that the plaintiff was a member of the Ustashi organisation. The rest was comment, not only on the facts contained in the words of the article, but also on other facts not contained therein. The defendants on their pleadings ought not to be allowed to interrogate to prove that that comment or those other facts were true. So to allow them would give them under the "rolled-up plea" all the advantage of a plea of justification with none of the disadvantages. On those particular words, he (his lordship) allowed interrogatories to prove that the plaintiff was a member of the Ustashi organisation, but no other. So also, in regard to the other words of the article complained of, he had admitted interrogatories tending to prove the facts stated, but not other facts or any comment. The master's order would be varied accordingly.

COUNSEL: *Slade*, K.C., and *John Thompson*; *Aiken Watson*, K.C.

SOLICITORS: *Church, Adams, Tatham & Co.*; *Waller, Neale and Houlston*, for *Marsh & Ferriman*, Worthing.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PARLIAMENTARY NEWS

ROYAL ASSENT

The following Bills received the Royal Assent on 10th December:—

BURMA INDEPENDENCE.
CEYLON INDEPENDENCE.
EDINBURGH MERCHANT COMPANY WIDOWS' FUND (AMENDMENT) ORDER CONFIRMATION.
EXPIRING LAWS CONTINUANCE.
HOUSING (TEMPORARY ACCOMMODATION).
JERSEY AND GUERNSEY (FINANCIAL PROVISIONS).
MANDATED AND TRUST TERRITORIES.
MINISTERS OF THE CROWN (TREASURY SECRETARIES).
NEW ZEALAND CONSTITUTION (AMENDMENT).
STORNOWAY HARBOUR ORDER CONFIRMATION.

HOUSE OF LORDS

Read First Time:—
FINANCE BILL [H.C.] [10th December.
PARLIAMENT BILL [H.C.] [11th December.
PENSIONS (GOVERNORS OF DOMINIONS, &C.) BILL [H.C.] [9th December.
PUBLIC WORKS LOANS BILL [H.C.] [10th December.

Read Third Time:—
EMERGENCY LAWS (MISCELLANEOUS PROVISIONS) BILL [H.C.] [11th December.

In Committee:—
RIVER BOARDS BILL [H.L.] [9th December.
WATER BILL [H.L.] [9th December.

HOUSE OF COMMONS

Read First Time:—
COATBRIDGE BURGH EXTENSION, &C., ORDER CONFIRMATION BILL [H.C.] [10th December.

To confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act, 1936, relating to Coatbridge Burgh Extension, &c.

Read Third Time:—
MEDICAL PRACTITIONERS AND PHARMACISTS BILL [H.L.] [9th December.

QUESTIONS TO MINISTERS

RENT RESTRICTION, CROWN LANDS

Mr. H. MACMILLAN asked the Minister of Health to what extent properties on Crown land are exempt from the provisions of the Rent Restrictions Acts; and what steps it is proposed to take to ensure that the principles of the Rent Restrictions Acts are nevertheless applied to such cases.

Mr. BEVAN: The courts have decided that property on Crown land is not subject to these Acts and the point has been noted for consideration when legislation to amend the Acts can be introduced. There is, however, no early prospect of legislation and meantime I am prepared to authorise the exercise of requisitioning powers in order to avoid the creation of hardship. [8th December.

LAND REGISTRATION, NORTHERN IRELAND

Lieutenant MULLAN asked the Secretary of State for the Home Department when it is proposed to transfer jurisdiction over the registration of deeds and the registration of title to land in Northern Ireland to the Government of Northern Ireland, pursuant to ss. 8 and 9, respectively, of the Northern Ireland Act, 1947.

Mr. EDE: It is hoped to make the transfer on 1st April, 1948. [8th December.

WAR DAMAGE PAYMENTS

Mr. JANNER asked the Chancellor of the Exchequer (1) what evidence does the War Damage Commission require before making a value payment under Pt. I of the War Damage Act, 1943; and how does the Commission ensure that the person who has the right to receive the value payment is in fact the person paid; (2) when payment is made to the wrong person under Pt. I of the War Damage Act, 1943, whether his regulations cause such payment to operate as a bar to paying the person who has the right to receive the payment or whether it is the policy of the Commission in such circumstances always to pay the right person.

Mr. GLENVIL HALL: The War Damage (Notification and Claims) Regulations under s. 31 of the War Damage Act, 1943 (S.R. & O., 1944, No. 816), prescribe the conditions which must be satisfied before a claimant has a right to receive a value payment. The action in any case of a second claimant after payment has been made would depend upon the circumstances of the particular case. My hon. friend will be glad to learn that to date there has been no case of this nature.

Mr. JANNER: Assuming a case of this description arises, is my right hon. friend prepared to make a payment to the person who is really entitled to the claim if by a mistake of his Department the wrong person has been paid?

Mr. GLENVIL HALL: The War Damage Commission naturally assures itself that the payment is made to the person entitled to it. If the full regulations were followed and an exact right to the title insisted upon in every case, I am assured that it would cost the individuals concerned, of which there are a great many, anything up to a quarter of a million pounds.

Mr. JANNER: Why has my right hon. friend suspended the very simple method of a certificate being obtained with regard to the title in view of the fact that it had been going on for quite a considerable time and has only been suspended during the last month or two?

Mr. GLENVIL HALL: It was done by arrangement. Where we have any doubt at all, a certificate is asked for or the title demanded. [11th December.

BUSINESS PREMISES RENTS (DEPARTMENTAL COMMITTEE)

In answer to a question by Mr. SKEFFINGTON, the PARLIAMENTARY SECRETARY TO THE BOARD OF TRADE (Mr. BELCHER) said that the Lord Chancellor had decided to appoint a Departmental Committee to consider, among other matters connected with the law of leasehold, whether it is desirable or practicable to control rents charged for business premises. [11th December.

At a meeting of the Law Students' Debating Society, held at The Law Society's Court Room, on Tuesday, 25th November, 1947 (Chairman, Mr. R. Watson), the motion "That the case of *Upson* v. *London Passenger Transport Board* (1947), 63 T.L.R. 452, was wrongly decided," was lost by one vote, there being fourteen members and three visitors present.

At the meeting on Tuesday, 2nd December, 1947 (Chairman, Mr. A. C. Goodall), the motion "That the legal profession should advertise," was carried by one vote, there being seven members and four visitors present.

RULES AND ORDERS

S.R. & O. 1947, No. 2576/L. 36

COUNTY COURT, ENGLAND—PROCEDURE

THE COUNTY COURT (CROWN PROCEEDINGS) RULES, 1947.

DATED DECEMBER 1, 1947.

1. These Rules may be cited as the County Court (Crown Proceedings) Rules, 1947.

2. In Order XLVI of the County Court Rules, 1936,* the following Rule shall be added after Rule 12 and shall stand as Rule 13, namely :—

"THE CROWN PROCEEDINGS ACT, 1947.

13.—(1) Save as provided by the Crown Proceedings Act, 1947 (hereinafter in this Rule referred to as "the Act") or by this Rule :—

(*a*) the County Court Rules shall, so far as may be, apply to all civil proceedings by or against the Crown instituted in a County Court on or after the first day of January, 1948 ;

(*b*) such civil proceedings as aforesaid shall, so far as may be, take the same form as civil proceedings between subjects ;

(*c*) civil proceedings by the Crown which have been instituted before the said first day of January shall be governed by the practice and procedure in force immediately before that day.

(2) Order II, Rule 1, shall not apply in the case of an action against the Crown (whether alone or with any other person), and Order II, Rule 13, shall not apply in the case of an originating application to which the Crown (whether alone or with any other person) is respondent ; and except where by any Act or Rule it is otherwise provided, any such action as aforesaid shall be commenced in the court for the district in which the cause of action wholly or in part arose, and any such originating application as aforesaid shall be commenced in the court for the district in which the subject matter of the application is situated :

Provided that—

(*a*) for the purposes of Order XXXV, Rule 2, the Crown shall be deemed to reside in the district of every court ; and

(*b*) if there is any reasonable doubt as to the court in which any such proceedings as aforesaid should be commenced under the preceding provisions of this paragraph, the proceedings may be commenced in the court for the district in which the plaintiff or one of the plaintiffs resides or carries on business.

(3) No default action shall be brought against the Crown.

(4) In the case of an action against the Crown the provisions of these Rules as to the commencement of proceedings shall have effect subject to the following modifications :—

(*a*) The proviso to Order VII, Rule 1 (1), shall not apply, and the particulars shall contain information as to the circumstances in which it is alleged that the liability of the Crown has arisen and as to the Government departments and officers of the Crown concerned.

(*b*) On the filing of the documents required by Order VI, Rule 3 (1), or Order XXXV, Rule 6, Order VI, Rule 3 (2) shall not apply, but the registrar shall :—

(i) enter a plaint in the books of the court and deliver to the plaintiff a plaint note, which shall be in Form 14 or 15 but with the omission of any reference to the date of hearing ;

(ii) serve upon the Crown a copy of the particulars of claim accompanied by a notice in Form 25A.

(*c*) Upon the service of the said notice all further proceedings in the action shall, except as hereinafter provided, be stayed.

(*d*) Within 28 days of the service of the said notice the Crown may file in the court office two copies of a demand for further information as specified in the demand, and thereupon the registrar shall serve one copy on the plaintiff.

(*e*) If within the said period the Crown does not file two copies of such a demand as aforesaid the stay of proceedings provided for by paragraph (*c*) hereof shall cease to have effect at the end of that period.

(*f*) If, within the said period, the Crown does file two copies of such a demand as aforesaid, the said stay of proceedings shall cease to have effect when the Crown files in the court office a statement that it is satisfied with the information in its possession as to the matters specified in paragraph (*a*) hereof, but save as aforesaid the said stay of proceedings shall remain in force :

Provided that where the plaintiff files in the court office and serves upon the Crown notice of application to remove the stay, then—

(i) if the Crown does not, within 14 days after service of the application, file in the court office a notice of objection thereto, the said stay shall cease to have effect at the end of that period ; and

(ii) if within 14 days after service of the application the Crown does file in the court office a notice of objection thereto, the said stay shall cease to have effect if and when the court decides that no further information as to the matters specified in paragraph (*a*) hereof is reasonably required by the Crown.

(*g*) When the said stay of proceedings ceases to have effect, the registrar shall fix a day for the hearing and give notice thereof to the plaintiff and shall proceed in accordance with sub-paragraphs (*b*) and (*c*) of Order VI, Rule 3 (2) :

Provided that it shall not be necessary to annex a copy of the particulars to the summons to be served on the Crown.

(5) The provisions of these Rules relating to personal service shall not apply to any document required to be served on the Crown, and Order VIII (with the exception of Rules 1, 3 and 9 (1)) shall not apply with respect to the service of documents on the Crown. Service of any such document shall be in accordance with s. 18 of the Act, and shall be effected

(*a*) by leaving the document at the office of the person to be served or of any agent whom he has nominated for the purpose, but in either case with a person belonging to the office where the document is left, or

(*b*) by posting it in a pre-paid registered envelope addressed to the person to be served or any such agent as aforesaid ;

and where service under this Rule is made by post the time at which the document so posted would be delivered in the ordinary course of post shall be considered as the time of service thereof.

(6) Part V of Order VIII shall apply in the case of proceedings by the Crown but shall not apply in the case of proceedings against the Crown.

(7) Where civil proceedings are brought by the Crown Order IX Rules 4 and 9 shall have effect subject to the following modifications :—

(i) In proceedings for the recovery of taxes, duties or penalties the defendant shall not be entitled to avail himself of any set-off or counter claim, or in proceedings of any other nature, to avail himself of any set-off or counter claim arising out of a right or claim to repayment in respect of any taxes, duties or penalties ; and

(ii) The defendant shall not be entitled without the leave of the judge to be obtained on application of which not less than seven clear days' notice has been given to the Crown, to avail himself of any set-off or counter claim, if either the subject matter of the set-off or counter claim does not relate to the Government department in the name of which the proceedings are brought or the proceedings are brought in the name of the Attorney General.

(8) Where civil proceedings are brought against the Crown the Crown shall not be entitled without the leave of the judge (to be obtained on an application of which not less than seven clear days' notice has been given to the plaintiff) to avail itself of any set-off or counter claim :—

(*a*) Where the Crown is sued in the name of a Government department if the subject matter thereof does not relate to that department ; or

(*b*) Where the Crown is sued in the name of the Attorney General.

(9) Order IX Rule 10 shall not apply where a defendant desires to set up a counter claim against the Crown, and the Crown is not the plaintiff in the action.

(10) Where a defendant applies for leave to issue a third party notice for service upon the Crown :—

(*a*) a copy of the notice served on the plaintiff in accordance with Order XII Rule 1 (2) shall be served upon the Crown seven clear days before the hearing of the application, and the Crown shall be entitled to appear at the hearing ;

(*b*) such leave shall not be granted unless the court is satisfied that the Crown is in possession of all such information as it reasonably requires as to the circumstances in which it is alleged that the liability of the Crown has arisen and as to the departments and officers of the Crown concerned.

(11) In the case of any proceedings to which the Crown is a party, the provisions of Order XIV (which relates to interrogatories and discovery and inspection of documents) shall have effect subject to the following modifications :—

(*a*) Where an order is made for interrogatories to be answered by the Crown, the order shall direct by what officer of the Crown the interrogatories are to be answered.

(*b*) Where an order for discovery against the Crown is made any affidavit to be made in answer shall be made by such officer of the Crown as the court shall direct.

(*c*) Any order of the court made under the powers conferred by subsection (1) of s. 28 of the Act, shall be construed as not requiring disclosure of the existence of any document, the existence of which it would, in the opinion of a Minister of the Crown, be injurious to the public interest to disclose.

(*d*) Rule 5 of Order XIV shall not apply to any document the disclosure of which is objected to on the ground that the production thereof would be injurious to the public interest.

(12) In the case of proceedings against the Crown a plaintiff shall not be entitled to have judgment entered against the Crown in default of pleading or appearance without the leave of the judge and accordingly Order XXXV, Rules 20 and 25 shall have effect subject to this Rule. An application to the judge for leave to have judgment entered against the Crown in default of appearance or pleading shall be made on seven clear days' notice to the Crown.

(13) Where the Crown is a third party and does not appear at the trial, paragraphs (2) and (3) of Order XII, Rule 2, shall not apply unless the judge otherwise directs, and an application to the judge for a direction that the said paragraphs shall apply to the Crown shall be made on not less than seven clear days' notice to the Crown.

(14) Nothing in any of the following Orders :—

XXV (Enforcement of judgments and orders) ;

XXVII (Garnishee proceedings) ;

XXX (Receivers) ;

*S.R. & O. 1936 (No. 626) I, p. 282.

shall apply in respect of any order against the Crown, and Order XXXIII (Replevin) shall have effect subject to the provisions of s. 21 of the Act.

(15) A certificate issued in accordance with s. 25 (1) of the Act shall be in Form 141 with such variations as the circumstances may require; and if the order provides for the payment of any money shall state the amount so payable.

(16) (*a*) No order for the attachment of debts under Order XXVII or for the appointment of a receiver under Order XXX shall be made or have effect in respect of any money due or accruing or alleged to be due or accruing from the Crown.

(*b*) In a case where it is alleged that such an order could have been obtained and would have had effect in respect of such money if it had been due or accruing from a subject, the judge may on the application of the judgment creditor make an order restraining the judgment debtor from receiving such money and directing payment by the Crown to the judgment creditor or to a receiver:

Provided that no such order shall be made in respect of—

(i) wages or salary payable to any officer of the Crown as such;

(ii) money which is subject to the provisions of any enactment prohibiting or restricting assigning or charging or taking in execution; or

(iii) money payable by the Crown to any person on account of a deposit in the Post Office Savings Bank.

(*c*) Where the judgment creditor seeks to make any such application as aforesaid he shall—

(i) file in the court office, an affidavit by himself or his solicitor in Form 205A containing the information required thereby;

(ii) if the application is made in a court other than the court in which the judgment or order was given or made, file in the court office a certificate of the judgment or order; and

(iii) produce the plaint note or originating process;

and thereupon the registrar shall enter the proceedings in the books of the court and fix a day for the hearing and prepare and issue a notice in Form 206A and make all necessary copies thereof.

(*d*) The notice shall be served upon the Crown not less than fourteen clear days before the day fixed for the hearing, and where it has been so served the registrar shall serve a copy thereof on the judgment debtor in accordance with Order VIII, Rule 39 not less than seven clear days before the day so fixed.

(*e*) If the Crown disputes liability, the judge may determine the question of the liability of the Crown, and where it is suggested that the debt with reference to which the proceedings are taken belongs to some third person, or that any third person has a claim upon it, the judge may order the third person to appear and state the nature and particulars of his claim upon the debt, and, after hearing the third person if he appears, the judge may bar the claim of the third person or may order an issue to be tried between the third person and the judgment creditor or make such other order (including an order as to costs) as may be just.

(17) Any proceedings which, if the Act had not been passed, might have been entertained in a County Court, in accordance with rules made by virtue of the Tithe Act, 1891, or the Tithe Act, 1936, may be instituted and proceeded with in like manner as if the Act had not been passed.

(18) An application by any person under subsection (3) of s. 9 of the Act for leave to bring proceedings in the name of the sender or addressee of a postal packet or his personal representatives shall be made by originating application, and the respondents to the application shall be the Crown and the person in whose name the applicant seeks to bring proceedings.

(19) In this Rule:—

"Civil proceedings by the Crown" and "civil proceedings against the Crown" and "civil proceedings by or against the Crown" have the same respective meanings as in Part II of the Act, and do not include any of the proceedings specified in subsection (3) of s. 23 of the Act;

"Civil proceedings to which the Crown is a party" has the same meaning as it has for the purposes of Part IV of the Act by virtue of subsection (4) of s. 38 of the Act.

Except where the context otherwise requires, references in these Rules to actions for the recovery of land or for the recovery of possession of land shall be construed as including proceedings against the Crown for an order under s. 21 of the Act declaring that the plaintiff is entitled as against the Crown to the land or to the possession thereof, and references in these Rules to actions for the delivery or specific delivery of property other than land shall be construed as including proceedings against the Crown for an order declaring that the plaintiff is entitled as against the Crown to the property or to the possession thereof."

3. The following forms shall be added to Appendix "A" to the County Court Rules and shall stand as Form No. 25A, Form No. 205A and Form No. 206A.

"

25A

CROWN PROCEEDINGS ACT, 1947.

NOTICE THAT A PLAINT HAS BEEN ENTERED AGAINST CROWN.

In County Court
Between Plaintiff
And Defendant

Take Notice that a plaint has been entered in the above action. A copy of the particulars of claim filed by the plaintiff accompanies this notice.

And take notice that within twenty-eight days from the date of the receipt by you of this notice you are required to send to me two copies of a statement that no further information is required by the Crown as to the circumstances in which it is alleged the liability of the Crown has arisen or as to the department and officers of the Crown concerned, or two copies of a demand specifying such further information as you require.

Dated the day of , 194 .

Registrar.

To the Solicitor or (the person acting as solicitor) for the Crown or (*where the Attorney General is made defendant*) (*The solicitor to H.M. Treasury*).

FORM 205A.

CROWN PROCEEDINGS ACT, 1947.

AFFIDAVIT IN SUPPORT OF APPLICATION DIRECTING PAYMENT BY CROWN TO JUDGMENT CREDITOR OF MONEY DUE BY CROWN TO JUDGMENT DEBTOR.

Plaint No.:
In County Court
Between Judgment Creditor
And Judgment Debtor
And [*state Government Department concerned or the Attorney General*]

I of in the County of [*or* I, of in the County of solicitor for] the above-named judgment creditor, make oath and say as follows:—

1. That I [*or*] recovered judgment [*or* obtained an order] in the County Court against the above-named judgment debtor for payment of the sum of £ : : for debt [*or* damages] and costs.

2. That the said judgment [*or* order] is still wholly unsatisfied [*or* is still unsatisfied as to the sum of £ : :].

3. That the Crown is indebted to the judgment debtor in the sum of £ : : [*add if so* for payment of which sum the judgment debtor recovered judgment [*or* obtained an order] in the County Court against the Department [*or the Attorney General*] on the day of 194 and by the said judgment [*or* order] it was ordered that the Department [*or the Attorney General*] should pay the said sum of £ : : to the registrar of the said court on the day of 194 and the sum of £ : : remains due and unpaid under the said judgment [*or* order]].

FORM 206A.

CROWN PROCEEDINGS ACT, 1947.

NOTICE OF APPLICATION FOR ORDER DIRECTING PAYMENT BY THE CROWN TO JUDGMENT CREDITOR OF MONEY DUE BY CROWN TO JUDGMENT DEBTOR.

Plaint No.:
In County Court
Between Judgment Creditor
And Judgment Debtor
And [*state Government Department concerned or the Attorney General*]

Take Notice that the judgment creditor will apply to the judge at a court to be holden at on the day of 194 at the hour of in the noon for an order restraining the judgment debtor from receiving the amount of the debt due, or accruing from the Crown to the judgment debtor or so much thereof as will satisfy the debt due under the judgment for £ : : for debt (*or* damages) and costs given (*or* made) in the County Court on the day of 194 in an action in which the judgment creditor was plaintiff and the judgment debtor was defendant and directing payment thereof by the Department (*or the Attorney General*) to the judgment creditor or a receiver. "

We, the undersigned members of the Rule Committee appointed by the Lord Chancellor under Section 99 of the County Courts Act, 1934, having by virtue of the powers vested in us in this behalf made the foregoing Rules, do hereby certify the same under our hands and submit them to the Lord Chancellor accordingly.

Ernest Hancock. *R. T. Monier-Williams.*
Donald Hurst. *Gilbert Hicks.*
B. Ormerod. *Roland Marshall.*
J. Alun Pugh.

Approved by the Rule Committee of the Supreme Court.

A. E. A. Napier,
Secretary.

I allow these Rules which shall come into force on the first day of January, 1948.

Dated the 1st day of December, 1947.

Jowitt, C.

NOTES AND NEWS

Honours and Appointments

Mr. ERSKINE SIMES, K.C., Recorder of Banbury, is the Chairman of the Committee, appointed by the Minister of Health and the Secretary of State for Scotland, "to consider and report on the practicability and desirability of meeting part of local expenditure by an additional rate on site values, having regard to the provisions of the Town and Country Planning Acts and other factors."

Mr. R. H. NICHOLSON has been appointed Assistant Solicitor to the Bebington (Cheshire) Corporation.

Notes

THE LAW SOCIETY

The President, Vice-President and Council of The Law Society gave a dinner, on 11th December, at The Law Society's Hall. Those present, or who accepted the invitation, included:—The Lord Chief Justice, the Master of the Rolls, Lord MacDermott, Lord Justice Asquith, Mr. Justice Hodson, Mr. Justice Atkinson, Mr. Justice Wynn Parry, Mr. Justice Vaisey; Mr. G. O. Slade, K.C., Sir Frank Soskice, K.C., M.P., Major James Milner, M.P., the Hon. Sir Albert Napier, K.C., Sir Valentine Holmes, K.C., Judge St. John Field, K.C., Sir Ralph Bond, the Archdeacon of Bedford, Sir Malcolm Trustram Eve, K.C., Sir Cornelius Gregg, Sir Percy Simner, Mr. Alexander Gilchrist, Mr. C. E. Harman, K.C., Mr. C. L. Henderson, K.C., Judge Collingwood, Mr. H. Glyn-Jones, K.C.; Master Hawkins, Master Lawton, Lieutenant-Colonel J. P. Hunt, Mr. G. B. Hutchings, Mr. Desmond Heap, Mr. E. W. Tame, Captain M. H. Francis, Mr. L. C. B. Bowker, Mr. W. B. Frampton, Mr. F. M. Welsford, Mr. H. V. Lloyd-Jones, Mr. C. E. Woodhouse, Mr. Gerald Russell, and Mr. G. E. Longrigg.

SOLICITORS' BENEVOLENT ASSOCIATION

At a board meeting held on the 3rd December, 1947, the directors heard with the deepest regret of the death on 23rd November, of their colleague, Mr. A. F. King-Stephens, who had been a director of the Association for a number of years and their Chairman for the year 1946–47. A resolution was passed placing on record the board's appreciation of Mr. King-Stephens' services and generous support, and expressing sympathy with Mrs. King-Stephens and Messrs. Lawrence, Graham & Co.

Grants and annuities amounting to £2,499 15s. 8d. were made to thirty beneficiaries.

Sixty-five new members were admitted, bringing the total to 6,966.

All solicitors on the roll for England and Wales are eligible for membership, and the Secretary, at 12 Clifford's Inn, E.C.4, will be glad to send particulars of the Association's work to any solicitor who is not yet a member. The minimum annual subscription is a guinea, life membership, ten guineas.

Wills and Bequests

Mr. F. A. W. Cobbold, solicitor, of Ipswich, left £75,603.

COURT PAPERS

SUPREME COURT OF JUDICATURE

MICHAELMAS SITTINGS, 1947

COURT OF APPEAL AND HIGH COURT OF JUSTICE
CHANCERY DIVISION

ROTA OF REGISTRARS IN ATTENDANCE ON

Date	Emergency Rota	Appeal Court I	Mr. Justice Vaisey
Mon., Dec. 22	Mr. Hay	Mr. Jones	Mr. Reader
Tues., ,, 23	Farr	Reader	Hay

	Group A		Group B	
	Mr. Justice Roxburgh	Mr. Justice Wynn Parry	Mr. Justice Romer	Mr. Justice Jenkins
Date	*Non-Witness*	*Witness*	*Non-Witness*	*Witness*
Mon., Dec. 22	Mr. Andrews	Mr. Blaker	Mr. Farr	Mr. Hay
Tues., ,, 23	Jones	Andrews	Blaker	Farr

The CHRISTMAS VACATION will commence on Wednesday, 24th December, 1947, and terminate on Tuesday, 6th January, 1948.

STOCK EXCHANGE PRICES OF CERTAIN TRUSTEE SECURITIES

Bank Rate (26th October, 1939) 2%

	Div. Months	Middle Price Dec. 15 1947	Flat Interest Yield £ s. d.	‡ Approximate Yield with redemption £ s. d.
British Government Securities				
Consols 4% 1957 or after	FA	109½	3 13 1	2 14 7
Consols 2½%	JAJO	83	3 0 3	—
War Loan 3% 1955–59	AO	102	2 18 10	2 14 0
War Loan 3½% 1952 or after	JD	103	3 8 0	2 17 0
Funding 4% Loan 1960–90	MN	112	3 11 5	2 16 2
Funding 3% Loan 1959–69	AO	101	2 19 5	2 17 10
Funding 2½% Loan 1952–57	JD	101	2 14 5	2 10 3
Funding 2½% Loan 1956–61	AO	98	2 11 0	2 13 8
Victory 4% Loan Av. life 18 years	MS	114	3 10 2	2 19 8
Conversion 3½% Loan 1961 or after	AL	105½	3 6 4	2 19 9
National Defence Loan 3% 1954–58	JJ	101½xd	2 19 1	2 14 0
National War Bonds 2½% 1952–54	MS	100¾	2 9 7	2 6 9
Savings Bonds 3% 1955–65	FA	102	2 18 10	2 13 8
Savings Bonds 3% 1960–70	MS	100½	2 19 8	2 19 1
Treasury 3%, 1966 or after	JAJO	99	3 0 7	—
Treasury 2½%, 1975 or after	AO	83	3 0 3	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	99½	3 0 4	—
Guaranteed 2½% Stock (Irish Land Act, 1903)	JJ	95	2 17 11	—
Redemption 3% 1986–96	AO	100½	2 19 8	2 19 7
Sudan 4½% 1939–73 Av. life 16 years	FA	109½	4 2 2	3 14 1
Sudan 4% 1974 Red. in part after 1950	MN	107½	3 14 5	—
Tanganyika 4% Guaranteed 1951–71	FA	103½	3 17 4	2 15 4
Lon. Elec. T.F. Corp. 2½% 1950–55	FA	96½	2 11 10	3 2 1
Colonial Securities				
*Australia (Commonw'h) 4% 1955–70	JJ	106	3 15 6	3 1 9
Australia (Commonw'h) 3½% 1964–74	JJ	103	3 3 1	3 0 6
*Australia (Commonw'h) 3% 1955–58	AO	100½	2 19 8	2 18 7
†Nigeria 4% 1963	AO	113	3 10 10	2 19 4
*Queensland 3½% 1950–70	JJ	100½	3 9 8	—
Southern Rhodesia 3½% 1961–66	JJ	109½xd	3 3 11	2 13 6
Trinidad 3% 1965–70	AO	101½	2 19 1	2 17 8
Corporation Stocks				
*Birmingham 3% 1947 or after	JJ	98	3 1 3	—
*Leeds 3½% 1958–62	JJ	104xd	3 2 6	2 15 3
*Liverpool 3% 1954–64	MN	101	2 19 5	2 16 7
Liverpool 3½% Red'mable by agreement with holders or by purchase	JAJO	108	3 4 10	—
London County 3% Con. Stock after 1920 at option of Corporation	MSJD	97	3 1 10	3 10 7
*London County 3½% 1954–59	FA	105½	3 6 4	2 11 3
*Manchester 3% 1941 or after	FA	98½	3 0 11	—
*Manchester 3% 1958–63	AO	101	2 19 5	2 17 7
Met. Water Board "A" 1963–2003	AO	97⅛	3 1 6	3 1 7
* Do. do. 3% "B" 1934–2003	MS	99½	3 0 4	3 0 10
* Do. do. 3% "E" 1953–73	JJ	100½xd	2 19 8	2 17 10
Middlesex C.C. 3% 1961–66	MS	101	2 19 5	2 18 2
*Newcastle 3% Consolidated 1957	MS	101	2 19 5	2 17 6
Nottingham 3% Irredeemable	MN	99	3 0 7	—
Sheffield Corporation 3½% 1968	JJ	108½	3 4 6	2 18 7
Railway Debenture and Preference Stocks				
Gt. Western Rly. 4% Debenture	JJ	124xd	3 4 6	—
Gt. Western Rly. 4½% Debenture	JJ	125½xd	3 11 9	—
Gt. Western Rly. 5% Debenture	JJ	137½xd	3 12 9	—
Gt. Western Rly. 5% Rent Charge	FA	134½xd	3 14 4	—
Gt. Western Rly. 5% Cons. G'rteed.	MA	132½xd	3 15 6	—
Gt. Western Rly. 5% Preference	MA	120½xd	4 3 0	—

* Not available to Trustees over par.
† Not available to Trustees over 115.
‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertisement Offices: 88–90, Chancery Lane, London, W.C.2. Telephone: Holborn 1403.

Annual Subscription: £3 inclusive (payable yearly, half-yearly or quarterly in advance).

Advertisements must be received first post Tuesday.

Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).